

Decision 13-11-026

November 14, 2013

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
Policies, Procedures and Rules for the
California Solar Initiative, the Self-
Generation Incentive Program and Other
Distributed Generation Issues.

R.10-05-004
(Filed May 6, 2010)

**ORDER VACATING DECISION (D.) 12-05-036
AND DISMISSING APPLICATIONS FOR REHEARING**

I. SUMMARY

This order responds to the applications for rehearing of Decision (D.) 12-05-036 (or “Decision”) filed by numerous parties. San Diego Gas and Electric Company (“SDG&E”) and The Utility Reform Network (“TURN”) individually filed rehearing applications on their own behalf. In addition, a rehearing application was filed by a group calling itself “Moving Parties” and consisting of: Southern California Edison Company (“SCE”); Pacific Gas and Electric Company (“PG&E”); The Energy Producers and Users Coalition (“EPUC”); and The California Large Energy Consumers Association (“CLECA”). A further rehearing application was filed by a group calling itself the “Joint Parties” and consisting of: The Solar Energy Industries Association; California Solar Energy Industries Association; Sierra Club; and Vote Solar Initiative.

In D.12-05-036, this Commission considered how to calculate the statutory limit¹ on the number of customers who could participate in the net-energy metering (“NEM”) subsidy programs offered by PG&E, SCE and SDG&E. We also

¹ This limit has often been referred to in the past as the NEM “cap.” The governing statute now uses the term “limit,” which we employ here.

determined to prepare a comprehensive, updated study of the cost-effectiveness of the net metering program, and indicated that the adoption of new policy rules would occur on or before January 1, 2015. As a precaution, the Decision ordered a temporary suspension of the NEM program on that date, if those new rules had not yet been adopted. As we explain below, recently-passed Assembly Bill No. 327 of the 2013-2014 Regular Session (“AB 327”), Stats. 2013, ch. 611, also addresses both those issues. AB 327 was signed into law by the Governor on October 7, 2013. Because the questions we addressed in D.12-05-036 are now resolved by statute, we believe our decision has become unnecessary. We will vacate the Decision to remove any potential for confusion, and ensure the NEM program is administered in accordance with the governing statute, as revised by AB 327. With the vacating of D.12-05-036, the rehearing applications become moot. This order therefore dismisses those rehearing applications.

II. DISCUSSION

A. Statutory Limit Issues

The NEM program is established by statute, namely Public Utilities Code section 2827.² The Legislature has chosen to make the NEM program available only to a limited number of utility customers who meet specific criteria. One of the constraints placed on the NEM program by section 2827 has been a limit on the amount of generation that can participate in the program. (See former Pub. Util. Code, § 2827, subd. (d), adopted by Sen. Bill No. 656 (1995-1996 Reg. Sess.) contained in Stats 1995, ch. 369, p. 1918.) When a utility reaches its generation limit, no new customers can sign up for the NEM tariff offered by that utility.

At the time D.12-05-036 was adopted, the generation limit for utilities was established at “5 per cent of the aggregate customer peak demand of those electric utilities.” (Pub. Util. Code, § 2827, subd. (c)(4).) In the proceedings leading up to the adoption of D.12-05-036, parties contested what measure of peak demand was identified by the statutory phrase “aggregate customer peak demand.” D.12-05-036 determined that

² All section references are to the Public Utilities Code, unless otherwise indicated.

the NEM limit for PG&E, SCE and SDG&E should be calculated using “non-coincident” peak demand. (D.12-05-036, p. 20 (Ordering Paragraphs 1, 2).) That measure of peak demand is calculated by adding together the individual demand peaks experienced by each of a utility’s customers. The rehearing applications filed by SDG&E, TURN and the Moving Parties contested that result.

AB 327 has added section 2827(c)(4)(B) to the public utilities code. That code section applies to “large electrical corporations,” namely PG&E, SCE and SDG&E. There, the specified that the generation limit for large utilities should be calculated using non-coincident peak demand. Specifically, section 2827(c)(4)(B) states: “for the purposes of calculating a large electrical corporation’s [NEM] program limit, ‘aggregate customer peak demand’ means the highest sum of the noncoincident peak demands of all the large electrical corporations customers that occurs in any calendar year.” Section 2827(c)(4)(B) goes on to state the results of that calculation in megawatts of generating capacity for PG&E, SCE and SDG&E in sub-paragraphs (i)-(iii).

Because the NEM limit for PG&E, SCE and SDG&E is now clearly defined by statute, and the phrase “aggregate customer peak demand” is statutorily defined to mean non-coincident peak demand, there is no longer any need for this Commission to consider and rule upon questions about how those utilities’ NEM limit should be calculated. We believe PG&E, SCE and SDG&E should follow the limit established by section 2827(c)(4)(B) and that D.12-05-036 is unnecessary.³

B. Program Suspension Issues

As a precaution, D.12-05-036 considered the possibility of delays because of time needed for the staff’s study of NEM issues, and the need to consider the adoption of new rules. Accordingly, we ordered a temporary suspension of the NEM program on

³ AB 327 was an ordinary measure, and will become effective in January 2014. However, because the statute establishes a limit that cannot be exceeded, we must look to AB 327 to determine the maximum amount of generation capacity that can subscribe to the NEM tariffs of PG&E, SCE and SDG&E. We do not believe that events occurring in 2013 should result in a utility exceeding a limit that is slated to come into effect in 2014.

January 1, 2015, if those new rules had not yet been adopted. The rehearing application filed by the Joint Parties contests that aspect of D.12-05-036.

AB 327 now establishes how and when the large utilities with NEM programs will transition to a different regulatory framework. On July 1, 2017, or at the time it reaches its NEM limit (if earlier), a large utility must offer a NEM tariff governed by the provisions of section 2827.1 and not section 2827(c)(1). (Pub. Util. Code, § 2827, subd. (c)(4)(B) & (c)(4)(D).) Moreover, until such a transition occurs, a large utility's NEM tariff must be made available "continuously and without interruption" (Pub. Util. Code, § 2827, subd. (c)(4)(B).) These provisions put in place a statutory mechanism to transition the NEM programs offered by PG&E, SCE and SDG&E to a new set of rules, and settle the question of whether we should suspend the program pending the development of new rules. As a result, the program suspension ordered in D.12-05-036 is no longer necessary.

III. CONCLUSION

Recently enacted AB 327 addresses the issues we resolved in D.12-05-036. We believe the NEM program should be governed by the provisions of that statute and that our prior decision on certain topics addressed by AB 327 is unnecessary. We will vacate D.12-05-036 and administer the NEM program in accordance with the statute. Because we will vacate D.12-05-036, the several applications for rehearing of that decision are now moot. We will therefore dismiss those rehearing applications.

THEREFORE, IT IS ORDERED that:

1. D.12-05-036 is vacated.
2. The rehearing applications filed by: San Diego Gas and Electric Company; The Utility Reform Network; the "Moving Parties" group consisting of Southern California Edison Company, Pacific Gas and Electric Company, The Energy Producers and Users Coalition, and The California Large Energy Consumers Association ("CLECA"); and the "Joint Parties" group consisting of The Solar Energy Industries Association, California Solar Energy Industries Association, Sierra Club and Vote Solar Initiative are dismissed.

3. This proceeding is closed.

This Order is effective today.

Dated November 14, 2013 at San Francisco, CA.

MICHAEL R. PEEVEY

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

MARK J. FERRON

CARLA J. PETERMAN

Commissioners